

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 18-80165-CR-DMM

UNITED STATES OF AMERICA,

Plaintiff,

NOVEMBER 1, 2018

vs.

WEST PALM BEACH, FLORIDA

JUSTIN MORGAN WAYNE, et al.,

Defendants.

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TRANSCRIPT OF SENTENCING HEARING  
BEFORE THE HONORABLE DONALD M. MIDDLEBROOKS  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: MARIE VILLAFANA, AUSA  
Office of U.S. Attorney  
400 Australian Avenue  
West Palm Beach, Florida 33401

FOR DEFT. JW MORGAN: RICHARD LUBIN, ESQ.  
Richard Lubin, P.A.  
12175 Flagler Drive  
2nd Floor  
West Palm Beach, Florida 33401

FOR DEFT. SMARTLAB: EDWARD REAGAN, ESQ.  
Edward D. Regan, P.A.  
658 West Indiantown Road  
Suite 209  
Jupiter, Florida 33458

FOR DEFT. HH WAYNE: ROBER PASCH, ESQ.  
Gonzalez & Prcher  
939 Belvedere Road  
West Palm Beach, Florida 33401

Thursday, November 1, 2018.

P-R-O-C-E-E-D-I-N-G-S

THE COURT: Good morning; please be seated.

This is sentencing in the case of the United States versus SmartLab, LLC, H. Hamilton Wayne, and Justin Morgan Wayne. The case number is 18-80165. Could we have appearances?

MS VILLAFANA: Good morning, Your Honor; Marie Villafana and Alexandra Chase for the United States.

THE COURT: Good morning.

MR. PASCH: Good morning, Your Honor; Robert Pasch here for H. Hamilton Wayne.

THE COURT: Good morning.

MR. LUBIN: Good morning, Your Honor; Richard Lubin here on behalf of Justin Morgan Wayne.

THE COURT: Good morning.

MR. REAGAN: Good morning; Edward Reagan on behalf of SmartLab.

THE COURT: Good morning.

Does it make sense to go ahead and take the individuals first?

MS. VILLAFANA: Yes, Your Honor.

THE COURT: All right.

At the outset, let me make sure I understand. As I think I told everyone at the outset, I try to follow plea agreements. I think that's the fairest approach with everyone

Thursday, November 1, 2018.

1 because they go into it with their eyes open. I'm a little  
2 confused about -- I want to make sure. There is the objection  
3 on role -- well, basically with respect to both defendants,  
4 there is an objection; but with respect to H. Hamilton Wayne,  
5 there is -- the Government is seeking a four-level increase;  
6 the Defense, three, they agree to a low end recommendation, if  
7 it is either 26 or 27.

8           With respect to Justin Wayne, there is a disagreement  
9 but there is also then, if the ruling goes against  
10 Mr. Wayne, the Government agrees to a variance.

11           So tell me, Ms. Villafana, what is your position?  
12 Probation suggests that you may not be as adamant on the four  
13 levels.

14           MS. VILLAFANA: Your Honor, let me clarify.

15           With regard to Justin Wayne, the guidelines are  
16 clear, all right; the guidelines say if the defendant was a  
17 manager or supervisor but not an organizer or leader, if the  
18 criminal activity involved five or more participants, increase  
19 by three levels. That clearly applies on its face to Justin  
20 Wayne, who was the chief operating officer and who managed  
21 numerous individuals, and the criminal activity definitely  
22 involved five or more participants. I think the reason why we  
23 agreed to the variance is because Justin Wayne's role was, in  
24 our opinion, seemed less serious, less significant than his  
25 brother's role, and a one level difference didn't seem to make

1 a lot of sense. So that's why we thought that the variance  
2 down to the equivalent of a two-level made sense.

3 With regard to Hawkeye Wayne, we believe that the  
4 four level enhancement does apply. He was an organizer or  
5 leader. He was the chief executive officer. He is the person  
6 that recruited his two brothers and others to work for the  
7 company. I mean, he was the company, so we think that the four  
8 levels are appropriate.

9 In terms of looking at other people who were also  
10 involved, was he less involved than some other people who also  
11 did recruiting; possibly, so a variance may be appropriate down  
12 to -- a one level variance may be appropriate just for that  
13 reason. I'll let Mr. Pasch speak to that, but I think we are  
14 trying to calculate the guidelines correctly and then deal with  
15 things via variances.

16 THE COURT: So you think it's four, but you might be  
17 agreeable to -- similarly to the brother, a variance of one  
18 level; is that basically your position?

19 MS. VILLAFANA: Yes, Your Honor. I wanted to hear  
20 what Mr. Pasch had to say before I made a definite decision.

21 THE COURT: Okay. Well, let's hear that because,  
22 essentially, I also want to have a reasonable sense as to the  
23 two defendants.

24 MR. PASCH: Thank you, Your Honor.

25 We do believe that a level three would be appropriate

1 and whether it is by Your Honor finding it be a level three or  
2 with the Government's agreement or not a strenuous objection to  
3 a variance to get to a level three.

4 When I look at the parties, our related cases here,  
5 there is only one individual who was sentenced to a level-four  
6 enhancement, that was Kenny Chatman. There is no way that  
7 Mr. Wayne is at all similarly situated to him.

8 I also prepared a sentencing memorandum, Your Honor,  
9 and we pretty much laid out what our arguments were. That's  
10 why we believe a level three versus a level four would be  
11 appropriate. A level four would be for the organizer --

12 THE COURT: But is it really -- I mean, basically, it  
13 is what Mr. Wayne did with respect to these organizations as  
14 opposed to some overall Chatman scheme, isn't it? He is being  
15 sentenced based on his activities with SmartLabs and also this  
16 other pharmacy, not what Chatman did.

17 MR. REAGAN: I agree with you, 100 percent, Your  
18 Honor. So if we look -- the reason I bring that to your  
19 attention is because when we are looking at related similar  
20 cases, I wanted, again, to indicate that there was no other  
21 individual involved in any scheme that received a level four,  
22 and there were other schemes that were centered around profit  
23 with Mr. Chatman, but as relates to this particular case,  
24 right, and this healthcare fraud, it has been our position and  
25 we highlighted it in our sentencing memorandum that it is our

1 position that it was Lanny Fried who was truly the organizer  
2 and the leader, and the reason why I feel so strongly about  
3 this is, if you look even on the addendum to the PSR report,  
4 and if you look at what are the factors the Court should  
5 consider whether a level four is appropriate. Factors such as  
6 recruitment of accomplices, organizing the offense, degree of  
7 control, these were Lanny Fried. Lanny Fried organized this.  
8 He is the one who brought the parties together. He is the one  
9 who decided what monies would be appropriate. He is the one  
10 who organized additional sales reps to facilitate this scheme.

11 And I agree with the Government that Mr. Wayne is the  
12 CEO of the corporation, but the scheme was -- the organized,  
13 created, devised by Lanny Fried.

14 THE COURT: Well -- but Fried hadn't been sentenced.  
15 I mean, what are his guidelines?

16 MR. PASCH: I'll allow the Government speak to  
17 Mr. Fried, Your Honor.

18 THE COURT: I don't have his case but --

19 MR. PASCH: I know, but we could also look at the --  
20 I think under the similar case, related cases, Your Honor, it  
21 does address Mr. Fried.

22 THE COURT: Well, he is in here, but he hasn't been  
23 sentenced.

24 MR. PASCH: Correct.

25 THE COURT: Sentencing is November 7th, so it is hard

1 for me to compare those two without knowing more about what  
2 Fried is facing.

3 MR. PASCH: And Your Honor --

4 THE COURT: And Fried wasn't an officer in this  
5 company, was he? I mean, basically, he may have put some of  
6 these people together and gotten some benefits, apparently a  
7 lot of benefits, as I read this PSI.

8 MR. PASCH: Your Honor, it is more that just somebody  
9 who put individuals together. Mr. Fried was really the  
10 individual who, beyond just introducing the parties to one  
11 another, he was the one who said this is how much should be  
12 paid. We -- he is the one who recruited additional sales reps  
13 to be a part of this. He is the one who was the liaison  
14 between all of the parties. He was the -- really the creator,  
15 the glue, the fabric of this scheme. This scheme would not  
16 have existed or would not have been effective but for Fried  
17 because he is the one who organized it. And that's why we  
18 really strenuously believe that, yes, Mr. Wayne is guilty and  
19 obviously he has pled, but it is a level -- for him, his  
20 involvement was as a manager, as a supervisor, because he  
21 didn't manage and supervise as relates to SmartLab, but the  
22 overall scheme was that of Lanny Fried. That's where we really  
23 stand, and I think that the factors to consider a level-four  
24 enhancement really more apply to Mr. Fried than it does to  
25 Mr. Wayne, and that's why we were asking for a level three.

1           If the Court disagreed with us, we would ask that the  
2 Court consider a level three through eight, through the  
3 variance, and it does appear the Government would not  
4 strenuously object to the Court doing that.

5           THE COURT: All right. thank you.

6           Ms. Villafana, what about Fried? I don't have much  
7 information about him, other than what is in this PSI.

8           MS. VILLAFANA: Right. So Mr. Fried cooperated  
9 pre-charge, and as part of his plea agreement, we agreed to  
10 charge him with money laundering. Mr. Wayne was not charged  
11 with money laundering, which would be another two level  
12 enhancement. But looking at the amount of money that Mr. Fried  
13 laundered, his guideline range is 57 to 71 months.

14           I mean, I guess in response to the issue about Mr.  
15 Fried, I think it would be a more compelling argument that  
16 Mr. Fried was the entire person in charge of constructing this  
17 scheme, if Mr. Wayne hadn't also been involved in kickbacks at  
18 another facility which he was. So I think that the four levels  
19 applies. I think the issue is whether or not a one-level  
20 variance is appropriate either, you know, because of  
21 disparities between similarly situated defendants or for some  
22 other reason.

23           THE COURT: All right. I'm going to deny your  
24 objection as to role. Mr. Wayne was the chief executive  
25 officer of SmartLab. He was the main decision-maker of the



1 business. He had a 40 percent ownership interest and had a  
2 larger share then of the fruits of this endeavor, and so I  
3 think the four-level increase is appropriate. I'll consider  
4 the variance argument subsequently.

5 So the offense level is 27, criminal history category  
6 one, the advisory guideline is 70 to 87 months. Ms. Villafana,  
7 you have -- you are sticking with your low end recommendation  
8 then of 70 months?

9 MS. VILLAFANA: Yes, Your Honor. With regard to the  
10 variance, you know, I do think that Mr. Fried was an important  
11 player in this, and that's why I think that the Court should at  
12 least consider issues regarding disparity of the sentences. I  
13 think it is notable that Mr. Wayne did come in and admit his  
14 liability, his wrongdoing with regard to another with RX to You  
15 without being charged. He was willing to come in and accept  
16 responsibility and pay restitution, and I know that Mr. Pasch  
17 will inform the Court that they have come ready to pay full  
18 restitution. I think they have already provided their funds to  
19 the clerk's office.

20 So in light of all of that, the Government agrees  
21 that a low end sentence is appropriate, if the Court grants --  
22 feels that a downward variance is appropriate by one level, the  
23 Government does not object to a low end at that level.

24 THE COURT: Which would be 63 months?

25 MS. VILLAFANA: That's correct, Your Honor.

1 THE COURT: All right. Mr. Pasch.

2 MR. PASCH: Thank you, Your Honor.

3 Thank you Government for that argument.

4 We do echo that, from the start, Mr. Wayne has taken  
5 absolute full responsibility for his actions. When the  
6 Government began their investigation, he immediately provided  
7 all documents that the Government requested, and he has made  
8 himself available for all debriefings. He has been  
9 forthcoming, honest. We are planning to testify at trial  
10 against two of the defendants in a similar related case. And  
11 that trial is scheduled for the end of November.

12 We have paid restitution in the amount of nearly \$4  
13 million. Mr. Wayne has also -- I have receipts, Your Honor, if  
14 you would like to see them. He also came prepared to pay  
15 whatever fines are levied against him today.

16 He, at no point, has made this a difficult process  
17 for the Government and, obviously, I will go into more detail  
18 as relates to the level of remorse.

19 Mr. Wayne has expressed -- and I can tell you, I have  
20 known Mr. Wayne for many, many years, and I have known him as a  
21 father, as a brother, as a son to his mom and dad, and as a  
22 friend; and I have never seen somebody more remorseful. And  
23 this is difficult because, again, he is not just a client, he  
24 is a very dear friend. And I can tell you that he has  
25 absolutely owned up to what he has done. He is testifying at

1 trial. He is cooperating with the Government as it relates to  
2 other matters.

3 As it relates to RX to You, it was another business  
4 that he was involved in. There was some questions as to some  
5 activities. He immediately took ownership for his wrongdoings  
6 as it relates to RX to You, and has paid almost \$1 million as  
7 it relates to his poor judgment in RX to You.

8 There are so many reasons why I believe a variance  
9 would be appropriate, but I'm going to try to save the Court  
10 the time of hearing it all because I think the Government  
11 agrees that a variance would be appropriate for Mr. Wayne, and  
12 that's why we would ask that the Court do grant that one level  
13 reduction or variance to 63 months.

14 If Your Honor would like to hear additional  
15 argument, we can make that but --

16 THE COURT: No, that's fine. That's fine.

17 Mr. Wayne, would you like to speak? You are not  
18 required to, but I want to make sure you know you have the  
19 opportunity.

20 Just pull the microphone over closer, if you would.

21 THE DEFENDANT: I just wanted to apologize to the  
22 Government and to my family. I made a terrible mistake, I'm so  
23 sorry.

24 THE COURT: All right, thank you, sir.

25 All right, I have considered the statements of all

1 parties, the presentence report which contains the advisory  
2 guidelines and the statutory factors. There is a very detailed  
3 plea agreement which contained an agreement as to many of the  
4 aspects that affect sentencing.

5 The offense level is 27, the criminal history  
6 category is one, the advisory guideline is 70 to 87 months. I  
7 have considered also, though, disparity of sentencing between  
8 Mr. Wayne and other persons involved in this crime and, for  
9 that reason, we will vary by one level.

10 It's the finding of the Court that the defendant is  
11 able to pay a fine in addition to restitution.

12 Do I still order restitution, although it has already  
13 been paid?

14 MS. VILLAFANA: You do have to, Your Honor.

15 THE COURT: It is therefore the judgment of the  
16 Court, the defendant, H. Hamilton Wayne, is committed to the  
17 Bureau of Prisons for 63 months. I recommend that he  
18 participate in the RDAP program, while with the Bureau of  
19 Prisons. It's further ordered the defendant shall pay  
20 restitution in the amount of \$3,851,773.40; \$2,897,389.50 is  
21 joint and several with co-defendants.

22 It is further ordered the defendant pay to the United  
23 States a total fine of \$50,000.

24 The restitution and fine shall be payable to the  
25 Clerk of the United States Court who will forward it to the

1 victims.

2           Upon release from imprisonment, the defendant shall  
3 be placed on supervised release for a term of three years.  
4 Within 72 hours of release, the defendant shall report in  
5 person to the probation office in the district to which he is  
6 released.

7           While on supervised release, the defendant shall  
8 comply with mandatory and standard conditions of supervised  
9 release which include not committing any crimes, being  
10 prohibited from possessing a firearm or other dangerous device;  
11 he shall not unlawfully possess a controlled substance and  
12 cooperate in the collection of DNA.

13           The defendant shall also comply with the following  
14 special conditions: Healthcare business restriction, related  
15 concern restriction, financial disclosure requirement,  
16 substance abuse treatment, and permissible search requirements,  
17 all noted in Part G of the Presentence Report.

18           It is further ordered that the defendant pay to the  
19 United States a special assessment of \$100.

20           The total sentence is 63 months imprisonment,  
21 \$3,851,733.40 in restitution, a \$50,000 fine, and three years  
22 supervised release, a \$100 special assessment.

23           Now that sentence has been imposed, does the  
24 defendant or his counsel object to the Court's findings of fact  
25 or the manner in which sentence was pronounced?

Thursday, November 1, 2018.

1           MR. PASCH: No, Your Honor, just a couple issues I  
2 did want to address; but your finding, no, no objection.

3           THE COURT: Mr. Wayne, your plea agreement contained  
4 an appellate waiver. Under the normal rules, you would have  
5 such a right to appeal, but any notice of appeal would have to  
6 be filed within 14 days. Failure to file a notice within that  
7 period would constitute a waiver of your right to appeal.

8           What did you want to address, Mr. Pasch?

9           MR. PASCH: Your Honor, just two matters. One of the  
10 concerns we had in the PSR report related to language of  
11 related cases, and it gives us a little concern because we are  
12 concerned about how the language in page six, paragraph 11, and  
13 page seven, paragraph 15, as relates to Kenny Chatman, will  
14 affect Mr. Wayne. In those two paragraphs, they address  
15 Mr. Chatman's crimes which include sex trafficking. That has  
16 absolutely nothing do with Mr. Wayne and will absolutely  
17 negatively impact him, not only in placement within prison  
18 systems, the possibility of admittance into the RDAP program,  
19 and even placement within the camp and since he -- and as Your  
20 Honor even noted, Mr. Chatman's case has nothing -- the facts  
21 of his particular case and his sentence really doesn't relate  
22 to this case. I would ask that the report not contain that  
23 language. That was one matter.

24           The other matter I was going to address, Your Honor,  
25 has to do with the turn-in dates; but if you would like to just

1 address this issue first.

2 THE COURT: What are you asking for, voluntary  
3 surrender of some sort?

4 MR. PASCH: Yes, Your Honor, and the Government and I  
5 have come to an agreement, or fair to say, they don't have a  
6 strenuous objection to the date that we are requesting.

7 THE COURT: Which is what?

8 MR. PASCH: Judge, we are requesting March 1st, and  
9 I'll explain to Your Honor why we are asking for March 1st.

10 Like I mentioned earlier, Mr. Wayne will be  
11 testifying at trial coming up at the end of month. We also  
12 anticipate additional debriefings on other matters will  
13 probably occur after trial is over; and there are certain  
14 family matters that Mr. Wayne -- it would be very, very  
15 important for Mr. Wayne to be a part of which will be occurring  
16 next year.

17 And I went over those matters with the Government,  
18 and the Government understands why we are requesting and does  
19 not object to our request for March 1st. That's the date that  
20 the Government and I came to agree on.

21 MS. VILLAFANA: Your Honor, that's correct. I don't  
22 have any objection to that date, and Mr. Pasch's  
23 representations regarding debriefings and the trial are  
24 correct.

25 I did want to just note one error in your

1 pronouncement of sentence. I think there was a typo in the  
2 PSI. The total restitution figure \$3,851,733.50, not 40 cents,  
3 it is not important, but it is important.

4 THE COURT: All right, fifty cents.

5 I'll agree to the March 1st, by 3:30 to the  
6 designated institution. If no institution has been designated,  
7 the U.S. Marshals.

8 You know, this -- I don't see how the Chatman  
9 information impacts the defendant's placement with the Bureau.  
10 It makes it clear that he wasn't involved in that part of it,  
11 and this is a typical format by Probation to talk about other  
12 defendants including -- and there are a lot of them in this  
13 case, so I don't see a basis to change it.

14 MR. PASCH: Your Honor --

15 THE COURT: The addendum, I think, does point out  
16 that he is not involved in sex trafficking.

17 MR. PASCH: Your Honor, may I -- I think Mr. Lubin  
18 would be able to address that issue even further and explain to  
19 you why, in fact, it has affected other clients.

20 MR. LUBIN: If I could, Your Honor, and I'm speaking  
21 to you on behalf of Justin Wayne; but, we had a case, Dr.  
22 Mendez, and plea agreement, it was a plea, Court recommended  
23 RDAP and a camp.

24 THE COURT: I doubt if I recommended a camp, I  
25 usually don't get into a particular facility. I do recommend



1 geographic places but not a camp.

2 MR. LUBIN: That's what it was, okay. Court  
3 recommended RDAP. They didn't put him in RDAP. What we found  
4 out, and co-counsel and I found it out, talked Ms. Villafana  
5 about it, was that because of the sex trafficking language  
6 which I believe was the same language talking about Kenny  
7 Chatman in a related kind of case, he didn't qualify for RDAP.

8 It's been a year now. A lot of letters, a lot of  
9 going back and forth, letter from the Government to the BOP,  
10 Mr. Vitale on behalf of Dr. Mendez had to do some things, and  
11 it was all because of that one language. And I would suggest  
12 to the Court that if it does -- since it doesn't affect the  
13 sentencing, it really doesn't affect the PSR at all. Kenny  
14 Chatman's sex trafficking had nothing really to do with the  
15 conspiracy that either these guys or Dr. Mendez was involved  
16 in, no one else knew about it, nobody was involved in it from  
17 our side of it. And since it appears to have an adverse effect  
18 on the BOP and the RDAP program, I would ask that the Court  
19 take it out. And it is not dishonesty in sentencing, nor in  
20 ruling on the PSR, the paragraphs are a little different as to  
21 Justin Wayne than they are as to Hawkeye. But it seems like  
22 the evidence is pretty strong that the reason he didn't get the  
23 RDAP program was because of that exact language. And it is  
24 almost superfluous because Chatman did that. That was like --  
25 in addition to all the other stuff he did, he happened to do

1 that, and it was really not a part of the conspiracy.

2 So if the Government wouldn't strongly object and we  
3 know that it has this effect, I ask the Court to consider just  
4 that one aspect, just to remove it.

5 THE COURT: Well, Mendez, was he part of that case,  
6 though?

7 MR. LUBIN: Yes.

8 MS. VILLAFANA: And that may be the difference, Your  
9 Honor, is that because that first paragraph, I think it is --  
10 in Hawkeye Wayne's, it is paragraph 11 where it talks about the  
11 charges in that case. Obviously, Dr. Mendez's name is listed,  
12 whereas in this case, you don't have any mention in the same  
13 paragraph of Mr. Wayne in sex trafficking.

14 I mean, my feeling is just I don't like to tell  
15 Probation how to do their job, so I would defer to the Court  
16 and the probation office on this issue.

17 THE COURT: Well, I mean, we could add some language  
18 saying in the paragraph dealing with this case, that they  
19 weren't involved in that aspect of it, but I don't know that  
20 it's necessary. I don't see why it is. Mendez's situation was  
21 probably different because he was listed in that case. These  
22 two defendants, as well as all of these others, I mean, there  
23 are a lot of related causes.

24 Tell me, Probation, do you have any suggestion how we  
25 deal with this?

1           PROBATION OFFICER: Your Honor, I think your  
2 suggestion as to add an extra sentence for clarification, that  
3 this defendant was not involved in any sex trafficking  
4 activities will perhaps clarify the matter and allow the  
5 information to remain as accurate as possible in the PSI.

6           THE COURT: Let's do that.

7           MR. PASCH: Your Honor, I have no objection to that.  
8 Thank you.

9           MR. LUBIN: I agree, I think that would solve the  
10 problem.

11          MR. PASCH: Thank you.

12          MR. LUBIN: Just for the record, I'll say it again,  
13 but as to Justin Wayne, that's paragraphs nine and 13. And I  
14 think they are different paragraphs as to Hawkeye Wayne.

15          MR. PASCH: And, Judge, the last thing as relates to  
16 Mr. Wayne was we were just going to request that the Court make  
17 a recommendation that he be housed at the Pensacola facility.

18          THE COURT: I'll recommend a geographic area. Do you  
19 want me to say North Florida?

20          MR. PASCH: Yes, Your Honor.

21          THE COURT: The problem is, I don't try to deal with  
22 the classification of a particular institution. I'll recommend  
23 geography but not -- because I don't know enough about them,  
24 frankly, so I'll recommend he be incarcerated in North Florida.

25          MR. PASCH: Thank you, Your Honor; nothing further

1 from us.

2 THE COURT: All right, let's take Justin Wayne's  
3 case.

4 Again, I have reviewed the plea agreement, the plea  
5 agreement contained an agreement as to base offense level, loss  
6 amount, ten or more victims, role, it was agreed two or three  
7 level enhancement, and a low level Government recommendation.  
8 The Government agreed that if the offense level was 24 under --  
9 in the PSI they would agree with a variance to a low level  
10 of 23. I reviewed the objection as to role, the defendant's  
11 sentencing memo, a number of attached letters. There was one  
12 letter -- and I should have mentioned this in the other  
13 sentencing as well, there was a letter that was an adverse  
14 letter from someone who wrote a letter with respect to both  
15 defendants that was not favorable. All of the other letters I  
16 reviewed, of course, were favorable.

17 Does that cover all of the filings?

18 MS. VILLAFANA: You filed a supplement.

19 MR. LUBIN: I think -- well, I know I filed what I  
20 designated as an addendum to my sentencing memo.

21 THE COURT: I'm not sure I saw that.

22 MR. LUBIN: And it addresses that unfavorable letter  
23 in detail rebutting it. But if the Court is of a mind, as you  
24 were with Hawkeye Wayne, to follow the recommendations in the  
25 plea agreement, we don't really need to address it, but I did

1 file it. Unfortunately, since the letter came in at the last  
2 minute, I didn't get to file it until yesterday, but it is  
3 filed.

4 THE COURT: Okay, I didn't see it, but I'm going to  
5 follow the joint recommendations.

6 MR. LUBIN: Okay, thank you.

7 THE COURT: And so I presume both sides recommend the  
8 low end of level 23, which is 46 months. Is that right, Ms.  
9 Villafana?

10 MS. VILLAFANA: Yes, Your Honor.

11 MR. LUBIN: Yes.

12 THE COURT: At least in terms of the bottom line.

13 MS. VILLAFANA: Correct, Your Honor.

14 THE COURT: Okay. And Mr. Wayne, did you wish to  
15 speak, sir? You are not required to, but I want to make sure  
16 you know you had the opportunity.

17 THE DEFENDANT: Yes, sir.

18 Your Honor, I sincerely apologize to Your Honor, to  
19 the Government, to the insurance carriers, and anyone else who  
20 has been harmed by my actions. I apologize to my family for  
21 the shame I have brought upon them. And I accept full 100  
22 percent responsibility for what I have done. I'll spend the  
23 rest of my days on earth making up for my actions. Thank you.

24 THE COURT: Thank you, sir.

25 I have considered the statements of the parties, the

1 Presentence Report which contains the advisory guidelines and  
2 the statutory factors. It's the finding of the Court the  
3 defendant is able to pay a fine and restitution.

4 The plea agreement was precise in its  
5 recommendations. On the role issue, I denied the objection as  
6 to role, but I will vary as recommended by the plea agreement.  
7 With that, the -- well, the advisory guideline is 51 to 63  
8 months with a one-level variance. The offense level goes from  
9 24 to 23, the low end of that advisory range is 46 months. I  
10 have considered that, the joint recommendations as well as the  
11 3553 factors. I was particularly impressed with a number of  
12 the letters written with respect to Mr. Wayne which would  
13 demonstrate that this was out of his normal way he has  
14 conducted his life.

15 It's the judgment of the Court that the defendant,  
16 Justin Morgan Wayne, is committed to the Bureau of Prisons for  
17 46 months. I recommend participation in the RDAP program.

18 It is further ordered the defendant make joint and  
19 several restitution in the amount of \$2,897,389.50. It is  
20 further ordered the defendant pay to the United States a total  
21 fine of \$20,000. The restitution and fine are payable to the  
22 Clerk of the United States Court who will forward it to -- the  
23 restitution will be forwarded to the victims.

24 And upon release from imprisonment, the defendant  
25 shall be placed on supervised release for a term of three

1 years. Within 72 hours of release, the defendant shall report  
2 in person to the probation office in the district to which he  
3 is released. While on supervised release, the defendant shall  
4 comply with mandatory and standard conditions of supervised  
5 release which include not committing any crime, being  
6 prohibited from possessing a firearm or other dangerous device;  
7 he shall not unlawfully possess a controlled substance and  
8 cooperate in the collection of DNA. The defendant shall also  
9 comply with the following special conditions: Healthcare  
10 business restriction, related concern restriction, financial  
11 disclosure requirement, mental health treatment, substance  
12 abuse treatment, and permissible search requirements noted in  
13 Part G of the Presentence Report.

14 It is further ordered the defendant shall pay to  
15 the United States a special assessment \$100.

16 So the total sentence is 46 months imprisonment,  
17 \$2,897,389.50 in restitution, a \$20,000 fine, three years  
18 supervised release, \$100 special assessment.

19 Now that sentence has been imposed, does the  
20 defendant or his counsel object to the Court's findings of fact  
21 or the manner in which sentence was pronounced?

22 MR. LUBIN: No, Your Honor; thank you.

23 THE COURT: Mr. Wayne, your plea agreement also  
24 contained an appellate waiver; under the normal rules, however,  
25 you would have a right to appeal. Any notice of appeal would

1 have to be filed within 14 days. Failure to file a notice  
2 within that period would constitute an additional waiver of  
3 your right to appeal.

4 Okay, you are going to make the same change with  
5 respect to Justin Wayne in this issue that he had nothing to do  
6 with Mr. Chatman's other activities.

7 MR. LUBIN: Thank you.

8 THE COURT: Do you want me to make a location  
9 recommendation?

10 MR. LUBIN: Yes, same. We -- I know you have already  
11 ordered the RDAP, but the same recommendation. I think that's  
12 the only camp anyway in North Florida, so hopefully he will go  
13 to Pensacola, but I would recommend that.

14 THE COURT: All right.

15 MR. LUBIN: In the alternative to that, I would  
16 recommend as close to South Florida as possible in the  
17 alternative, though, not instead of that.

18 THE COURT: All right. North Florida, or  
19 alternatively as close to South Florida as possible.

20 MR. LUBIN: I also would request a self-surrender  
21 date. Likewise, with Justin Wayne, he has been working with  
22 cooperating with the Government; kind of detailed work,  
23 numbers, and so forth, and so on, since that what his knowledge  
24 is. He expects that he will be called as a witness in at least  
25 this one oncoming trial. I would request the same surrender



1 date, if the Court would agree to that.

2 THE COURT: Any problem from the Government?

3 MS. VILLAFANA: No objection, Your Honor.

4 THE COURT: All right. Similarly, what was it March  
5 1st, wasn't it?

6 MR. LUBIN: Yes.

7 THE COURT: About 3:30 to the designated institution;  
8 if no institution has been designated, the U.S. Marshals.

9 MR. LUBIN: Then I did want to just point something  
10 out. I'm not familiar with the Hawkeye Wayne PSR; but in our  
11 PSR, there is a provision that if a Rule 35 is filed, in  
12 addition to that, the 3553 factors would be back in play, and  
13 it's really for that reason I filed the sentencing memorandum  
14 that I did with the anticipation that, at some point, we would  
15 be back in front of Your Honor requesting that an additional  
16 variance in addition to whatever the Rule 35 may say is in  
17 play. So that's a provision in our agreement that I just  
18 wanted to point out to the Court.

19 THE COURT: All right. Well, that's a bit unusual,  
20 when there is as specific recommendations as there were in both  
21 these plea agreements, but we will take that up, I guess, if it  
22 -- as I often say, if there is a Rule 35 filed, I urge the  
23 parties to try to get together and if you can come to a joint  
24 recommendation, I will enter it; otherwise, we will have a  
25 hearing.

1           Okay.

2           MR. LUBIN: Thank you.

3           THE COURT: That takes us to SmartLabs.

4           MR. REAGAN: Yes, Your Honor.

5           THE COURT: Again, I reviewed the plea agreement, the  
6 PSI. The plea agreement said there would be three years  
7 probation if the company failed to make restitution, as I read  
8 it, and there were no objections. Tell me where we stand in  
9 any of this.

10          MR. REAGAN: Restitution has been made, as the Court  
11 is aware, through Mr. Pasch. The company is in the process of  
12 shutting down. They are no longer testing any samples. They  
13 are no longer billing insurance companies. They have a  
14 skeleton staff in closing up the corporation. It appears,  
15 through Mr. Hawkeye Wayne, that it should be a nonoperating  
16 business by December.

17          In speaking with the Government, I advised that there  
18 was maybe in the 700,000-dollar range of funds there. They  
19 have recently -- all but I think 100,000 have been transferred  
20 to the restitution payment. There is 100,000 approximately  
21 left which are to cover the lease -- the lease on the office  
22 building that is required through 2019, a few accounts payable  
23 and salaries for the employees. The principals of the company  
24 are not taking any funds out of that. So what money is left is  
25 just to break even and shut the doors.

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1           So I think the Court, in speaking with Probation that  
2 if we did put the corporation on probation, it would only be  
3 until the company was no longer in existence; and much like a  
4 defendant who dies on supervision, that's -- probation would  
5 end.

6           THE COURT: So what you are suggesting is probation  
7 until it does what? Until it is inactive or closed or --

8           MR. REAGAN: Until it is closed. It's not -- well,  
9 it is operating in the point that it is receiving whatever  
10 payments, legitimate payments that have been billed; but it is  
11 not proactively engaging in any type of business.

12          THE COURT: So you think the language would be  
13 probation until the business is closed?

14          MR. REAGAN: I think you put the probation; and if  
15 the company closes, then according to at least Mr. Santucci at  
16 the U.S. Probation who I spoke with, Probation would treat it  
17 as a person under supervision died and it would be ended, at  
18 that point.

19          THE COURT: So -- I'm having a hard time following.  
20 I mean, they recommended three years probation.

21          MR. REAGAN: Sure.

22          THE COURT: You could have that, then it just  
23 terminates when it is closed. Is that what you think we ought  
24 to do?

25          MR. REAGAN: Yes, that's what we ought to do.

1 THE COURT: You agree with that, Ms. Villafana or --

2 MS. VILLAFANA: Your Honor, my understanding of the  
3 statute is that the Court must impose either a fine or  
4 restitution, since all of the monies, it seems like, have been  
5 either used to pay restitution or will be needed to do  
6 legitimate things like pay salaries, et cetera, we think that a  
7 probationary sentence is appropriate. I think the three years  
8 is fine; and then if the company does indeed go out of  
9 business, we will just meet with Probation and let them know.

10 THE COURT: Is that --

11 PROBATION OFFICER: Yes, Your Honor, just to clarify,  
12 once the business does become inactive, the probation office  
13 will just continue to monitor that it doesn't become again  
14 active for the remainder of the term of probation. So the term  
15 of probation would be for the full three years, and there would  
16 be just a monitoring of that business.

17 THE COURT: If you all wanted to recommend it be  
18 terminated, you could do that which might make sense to spare  
19 them some monitoring.

20 MS. VILLAFANA: That's fine, Your Honor. I will stay  
21 in touch with Mr. Reagan, and we will follow up as necessary.

22 THE COURT: I would still order the restitution.

23 MS. VILLAFANA: Yes.

24 THE COURT: Although it has been paid, right?

25 MR. REAGAN: Correct.

1 THE COURT: Anything else, Mr. Reagan?

2 MR. REAGAN: Other than the 400-dollar assessment.

3 THE COURT: Right.

4 MR. REAGAN: I think that's it, Judge.

5 THE COURT: Is there any representative of SmartLabs  
6 that wants to speak? I mean, we have heard from the two  
7 principals. I don't know that it is necessary, but I want to  
8 make sure I give people the opportunity.

9 MR. REAGAN: No, I think --

10 THE COURT: There is no need for that?

11 MR. REAGAN: There is no need. We will decline.

12 THE COURT: All right.

13 Okay. Well, I have considered the statements of the  
14 parties, the presentence report and the statutory factors, it  
15 is the finding of the Court the defendant is not able to pay a  
16 fine in addition to restitution.

17 It's the judgment of the Court the defendant,  
18 SmartLab LLC, is placed on probation for three years. If  
19 the -- I'm amenable to terminating probation once the company  
20 closes.

21 It is further ordered the defendant shall pay joint  
22 and several restitution in the amount of \$2,897,389.50;  
23 restitution is payable to the clerk who will forward it to the  
24 victims.

25 While on probation, the defendant shall not commit

1 any crimes and comply with standard conditions of probation  
2 including the following special conditions: Disclosure of  
3 business financial records, compliance program requirement, and  
4 prohibition of business reorganization to avoid conditions of  
5 probation, all noted in Part G of the presentence report.

6 It is further ordered the defendant pay to the United  
7 States a special assessment of \$400.

8 So the total sentence is three years probation,  
9 \$2,897,389.50 in restitution, a 400-dollar special assessment.

10 Now that sentence has been imposed, does the  
11 defendant or its counsel object to the Court's findings of fact  
12 or the manner in which sentence was pronounced?

13 MR. REAGAN: No, Your Honor.

14 THE COURT: All right.

15 There was similarly an appellate waiver in this plea  
16 agreement; but under the normal rules, SmartLabs would have a  
17 right to appeal. Any notice of appeal would have to be filed  
18 within 14 days. Failure to file a notice within that period  
19 would constitute a waiver of its right to appeal.

20 Okay. Is that it?

21 MR. REAGAN: That's it, thank you.

22 THE COURT: Good luck to you.

23 MS. VILLAFANA: Thank you very much Your Honor.

24 MR. PASCH: Thank you, Your Honor.

25 (PROCEEDINGS ADJOURNED AT 11:44 A.M.)

Thursday, November 1, 2018.

**C-E-R-T-I-F-I-C-A-T-E**

I hereby certify that the foregoing is  
an accurate transcription and proceedings in the  
above-entitled matter.

**5/20/2019**

DATE

**/s/DIANE MILLER**

DIANE MILLER, RMR, CRR, CRC  
Official Court Reporter  
United States District Court  
701 Clematis Street, Room 259  
West Palm Beach, FL 33401  
561-514-3728

Thursday, November 1, 2018.